

COMPLIANCE BOARD OPINION NO. 98-1
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March 27, 1998

Daniel J. Earnshaw, Esquire

The Open Meetings Compliance Board has considered your complaint concerning a closed meeting by the Mayor and City Council of Aberdeen on February 2, 1998. Our opinion is that the Open Meetings Act did not apply to the meeting.¹

I

Complaint and Response

Your complaint alleges that, in this closed meeting, the Mayor and City Council voted to uphold a decision of the Aberdeen City Election Board to deny certification of a petition that had been submitted by a group of Aberdeen residents. The petition sought a referendum on an ordinance passed by the Mayor and City Council that pertained to the rezoning of property within Aberdeen to allow for the construction of a minor league baseball stadium. You indicate that the “issues determined in the closed meeting were of great importance to the public, *i.e.*, whether a referendum would held in the city, whether the procedures used by the City Election Board were proper and whether the voter lists in the city were accurate or contained irregularities.” You assert that the Mayor and City Council did not hold a public recorded vote before meeting in closed session and that the presiding officer failed to make the written statement required by the Open Meetings Act concerning the reason for closing the meeting, the authority under which the meeting could be closed, and the topics to be discussed.

In a timely response on behalf of the City Council, Gregory A. Rapisarda, Esquire contended that the City Council was acting in an administrative capacity when it considered the citizen group’s objections to the decision of the Election Board. Thus, Mr. Rapisarda contended, the City Council was carrying out an executive function not subject to the Open Meetings Act.

¹ Whether the closing of the meeting was consistent with the Aberdeen Charter is an issue beyond the jurisdiction of the Open Meetings Compliance Board.

II

Analysis

The Open Meetings Act “does not apply to ... a public body when it is carrying out ... an executive function ... or ... a quasi-judicial function.” §10-503(a)(1)(i) and (iii).²

Because the City Council was hearing an appeal, the first issue to be considered is whether the Council was carrying out a quasi-judicial function.³ For purposes of the Open Meetings Act, a “quasi-judicial function” encompasses only three things:

- (1) a contested case to which Subtitle 2 of this title applies;
- (2) a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review; or
- (3) a complaint by the [Compliance] Board in accordance with this subtitle.

§10-502(i). The dispute about the referendum petition was not a contested case to which Title 10, Subtitle 2 of the State Government – the contested case provisions of the Maryland Administrative Procedure Act – applied, because neither the Election Board nor the City Council is an “agency” for purposes of Subtitle 2. *See* §10-202(b). Nor, of course, did the dispute over the referendum petition involve, at that time, a complaint to the Compliance Board.

The third possibility is that the City Council was engaged in “a determination of ... a proceeding before an administrative agency for which Title 7, Chapter 200 of the Maryland Rules would govern judicial review.” These rules “govern actions for judicial review of an order or action of an administrative agency, where judicial review is authorized by statute.” Maryland Rule 7-201(a). Under Maryland Rule 7-201(b), “‘an administrative agency’ means

² There are exceptions to this general exclusion, but they are not pertinent here. *See* §10-503(b).

³ In hearing and deciding the citizen group’s appeal from the actions of the Election Board, the City Council manifestly was not engaged in a “legislative” or “quasi-legislative” function. *See* §10-502(f) and (j).

any agency, board, ... commission, authority, ... or other unit of the State or of a political subdivision of the State.” It seems clear enough that the *Election Board* is an “administrative agency” whose actions are subject to judicial review under the equivalent of a statute — namely the Aberdeen Charter, which provides that, “if any person shall feel aggrieved by the action of the Board in refusing to register or in striking off the name of any person, *or by any other action*, such person may appeal to the Circuit Court for Harford County.” Article VII, ¶8 of the Aberdeen Charter. The role of the City Council is harder to characterize. When, *by charter*, a city council has responsibility to hear appeals from a municipal election board, the council is an administrative agency whose decision is subject to judicial review. *Ocean City Bd. of Supervisors of Elec. v. Gisriel*, 102 Md. App. 136, 149, 648 A.2d 1091 (1994). We have not found a provision of the Aberdeen Charter, however, that specifies an appellate role for the City Council with respect to the validity of a referendum petition.⁴ If the Charter has been properly construed as authorizing such a role — and the Compliance Board is not in the position to construe the Charter otherwise — then the Act’s exclusion for quasi-judicial functions excused the City Council from complying with the Act at the February 2 meeting.

In any event, if the Council was not engaged in a quasi-judicial function, then it was engaged in an executive function, because it was carrying out “the administration of ... a law of a political subdivision of the State.” §10-502(d)(1)(ii). While we cannot identify the particular Charter provision that authorized the City Council’s consideration of the petition issue, presumably it was doing so as an aspect of its general oversight responsibilities. Because the Council has a duty under Article V, ¶11b to submit ordinances that have been petitioned to referendum to the voters, presumably it has a particular interest in oversight of the Election Board’s handling of referendum petitions. When the Council assessed how the Election Board had handled the referendum petition, it was engaged in the administration of existing law, not the creation of new law or policy. This activity falls within the executive function, and the Open Meetings Act did not apply to its February 2 meeting.

⁴ Article VII, ¶1 of the Charter provides as follows: “The Council shall be the final judge of the election and qualification of its members and shall in this capacity serve as a board of appeals for any decision made by the Board of Elections.” The phrase “any decision made by the Board of Elections,” in this context, unmistakably refers to decisions pertaining to the election of members of the Council, not other decisions.

III

Conclusion

Whether the City Council's activity on February 2 is better characterized as a quasi-judicial function or an executive function is immaterial to the conclusion: Either function is excluded from the Act, and therefore the Open Meetings Act did not apply to the Council's February 2 meeting.

OPEN MEETINGS COMPLIANCE BOARD

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